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DEPARTMENT OF STATE

Washington, D.C. 20520

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Authority NND 969054
By WOP NARA Date 4/18/03

June 24, 1970

MEMORANDUM FOR MR. HENRY A. KISSINGER
THE WHITE HOUSE

Copies To:

Subject: OAS General Assembly Agenda Item on
Terrorism and Kidnapping

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In response to Mrs. Davis' request of June 22, I enclose a copy of the Issues Paper for the Secretary of State prepared on this subject. The question continues to be under informal discussion among certain OAS Representatives in Washington as well as with Foreign Ministries, but a consensus has yet to develop on the content of a resolution to be adopted by the General Assembly.

In addition to the Argentine draft and the U.S. suggestions summarized in the attached memorandum, the Mexican Representative late last week gave us what he termed a "skeleton" draft. This, in effect, does little more than the Permanent Council resolution, in that its operative paragraphs simply (1) reaffirm human rights principles; (2) condemn acts of violence, including acts of terrorism, especially kidnapping and extortion; and (3) recommend that the Inter-American Juridical Committee and the Inter-American Commission on Human Rights submit recommendations to the next session of the General Assembly on the aspects of the problem that can be subject to international action. Additionally, however, the Mexican Representative expressed general agreement with our proposal on the preparation of an international instrument

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recognizing terrorist acts against representatives of foreign states as international crimes. There are several aspects of the Argentine draft that Mexico cannot accept, including the identification of terrorist acts as common crimes and the mention of asylum and extradition.

We have just received a copy of a Brazilian draft resolution, whose operative paragraphs: (1) recommend that member states take adequate domestic measures with respect to crimes of terrorism and kidnapping, including appropriate definition under their penal laws; (2) urge member governments bilaterally and multilaterally to exchange information and coordinate action; (3) request the Inter-American Juridical Committee (IAJC) to commence within 30 days and complete in 60 days thereafter a draft international instrument dealing with the objective of this resolution; (4) recommend that the IAJC in its proposal take account of the need to adjust the practice of asylum and extradition so as not to benefit the perpetrators of such crimes, which should be characterized as international crimes and crimes against humanity; (5) recommend that the Permanent Council urgently convoke a special session of the OAS General Assembly to examine and approve the IAJC proposal as soon as it is completed. (The draft resolution does not specifically mention terrorist crimes against representatives of foreign states, which, of course, is an important point as far as we are concerned.)

We have a number of returns from our circular telegram explaining the Argentine proposal and our suggestions. These preliminary reactions indicate that: Uruguay reacts favorably to our suggestions for strengthening the Argentine draft; Venezuela is inclined to support the Argentine draft but agrees with us that the international aspects of the problem should be strengthened; Costa Rica, Nicaragua and Paraguay are in general agreement that the Argentine draft needs strengthening; Colombia in principle supports the Argentine draft but will study other suggestions, including ours; Mexico will study our suggestions, and is grateful of our desire to avoid any adverse reflection on Mexico's actions in receiving "ransomees"; Barbados agrees "something must be done" collectively; Guatemala tends to favor

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concentrating on moral condemnation, but will defer to others to take the initiative, as will Jamaica for different reasons; Bolivia, Peru and Chile are so far non-committal but will study our suggestions.

There seems to be some difference of opinion between those who advocate unanimity even at the sacrifice of a strong resolution, and those who advocate the reverse.

In our case, we are prepared to make some adjustments in our own proposals as we learn more of the positions of other members. So far, in our conversations, we have found considerable agreement with our desire not to limit the options available in seeking the release of kidnapped diplomats (or other persons).

Melvyn Switsky
for Theodore L. Eliot, Jr.
Executive Secretary

Enclosure:

Issues Paper on OAS Policy and Action
on Terrorism and Kidnapping

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Clearances:

C-Mr. Pedersen *AB*
USOAS-Amb. Jova *ttt*
ARA-Mr. Meyer *me*
L/ARA-Mr. Feldman
S/S-

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TERRORISM AND KIDNAPPING

(Agenda Item 13)

Summary of U.S. Position

The U.S. supports the Argentine initiative in raising this matter as well as the Argentine draft resolution which is now under informal discussion among OAS members. However, since the Argentine resolution is addressed primarily to the problems of terrorism and kidnapping in general, regardless of the victim (with only passing mention of such crimes committed against representatives of foreign states), the U.S. is endeavoring through the present consultation process to strengthen the draft by adding greater emphasis to the international aspects of the problem, including: (a) a specific condemnation of terrorist acts (including kidnapping) against representatives of foreign states; (b) a recommendation that member states facilitate the extradition of terrorists; (c) a provision setting in motion the preparation of an international instrument declaring terrorists acts against representatives of foreign states to be international crimes; (d) a call on world opinion and particularly on countries and organizations that maintain ties with terrorist movements. This last suggestion might serve as a springboard for future consideration by the UN General Assembly.

We are seeking to avoid any steps in the OAS that might limit the options available to governments in securing the release of kidnapped diplomats, including the release of prisoners (who might themselves be terrorists) into asylum as ransom, when agreed to by the governments concerned.

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Discussion

Argentina took the original initiative in April 1970 in placing this matter before the OAS Permanent Council, and Uruguay added the proposal that it go from there to the General Assembly. On May 15 the Permanent Council adopted a resolution that: (1) reaffirmed human rights principles; (2) condemned terrorist acts as crimes against humanity; and (3) recommended the inclusion of this item on the General Assembly agenda, namely "The general action and policy of the Organization regarding acts of terrorism and particularly the kidnapping of persons and extortion connected with that crime".

Argentina continues to take the principal initiative and has circulated to members a draft General Assembly resolution, whose operative paragraphs would: (1) reaffirm human rights principles; (2) condemn terrorism, kidnapping and extortion; (3) declare that, despite any ideological significance, such acts are common crimes; (4) recommend that member states take measures domestically to put an end to such crimes, define them under their penal laws, and establish suitable penalties; (5) urge member governments bilaterally and multilaterally to exchange information and coordinate action with respect to such crimes; (6) request the Inter-American Juridical Committee to study the status and responsibility of the perpetrators of such crimes, which affect not only internal peace but also, in the case of the kidnapping of representatives of foreign states, disturb the normal functioning of international relations -- with the stipulation this study consider especially (the question of) the application in such cases of the right of asylum, whose purpose is to protect human rights.

Paragraphs 3 and 6 above are connected, as they relate to the principle that common criminals are not entitled to the right of asylum (nor to exemption from

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extradition). The Argentines explain that paragraph 3 is designed to provide a helpful basis for governments that wish to apply this principle to terrorists, including kidnappers, while the results of paragraph 6 would hopefully go a step further by providing a firmer juridical basis and definition for such application, perhaps through international commitments.

While in general agreement with the Argentine proposal; we have suggested that it be strengthened by including provisions that would: (1) add to paragraph 2 a specific condemnation of terrorist acts directed against representatives of foreign states as violations of not only human rights but also of principles governing the conduct of relations between states; (2) sharpen the wording of paragraphs 3 and 6 to avoid any implication that terrorists are entitled to asylum under present law; (3) add to paragraph 4 a recommendation that member states facilitate the extradition of terrorists; (4) add a new paragraph requesting the Permanent Council, in consultation with the Inter-American Juridical Committee and with the assistance of the General Secretariat, to prepare for submission to a specialized Inter-American Conference an appropriate international instrument recognizing terrorists acts, including kidnapping, directed against representatives of foreign states as international crimes and stipulating measures to deter and punish such crimes; (5) add a new paragraph calling on world opinion, and particularly on those countries and organizations that maintain ties with movements that perpetrate these crimes, to use their influence to help bring an end to such acts.

In making suggestion (1) above we have pointed out that it was the kidnapping of diplomats that brought the matter to OAS and world attention and hence should be added to the condemnation, and that

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we are not thinking of diplomats as specially privileged persons (a point that concerned some of our colleagues) but as agents conducting relations between states. The measures contemplated in suggestion (4) could include, among others, the prosecution by any state of terrorist crimes against foreign representatives (as in the case of piracy), a commitment to extradite such criminals, and/or extended statute of limitations for such crimes. In suggestion (5) we are thinking of a springboard for possible consideration in the UN General Assembly and of bringing some focus to bear on the indirect responsibility of those countries and organizations that advocate armed struggle and terrorism (e.g. the Havana-based Latin American Solidarity Organization and the Tricontinental Organization that recently published a manual on terrorism). Some members have problems with this suggestion, which they consider an indirect accusation against Cuba and other communist countries.

In connection with our desire to avoid limiting the options available in securing the release of kidnapped diplomats (see summary), we believe it is essential to maintain a clear distinction between the traditional right of asylum as a humanitarian principle for the benefit of the asylee, on the one hand, and the recent granting of asylum to prisoners at the request of the governments concerned as a humanitarian expedient for the benefit of a kidnapped person. In our view, a limitation on the right of asylum would affect the former but not the latter. By making this distinction clear, we hope both to keep the options open and to set to rest Mexico's misgivings that the proposed resolution might reflect adversely on recent actions by the Mexican Government in granting asylum to "ransomees".

Note: A revised Argentine draft has just been received and will be appended when translated, together with a text of the U.S. suggestions. Since

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both will be under continuing discussion, and since hopefully many of our suggestions will be incorporated in the Argentine draft, there will doubtless be changes in the days ahead.

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WASHINGTON, D.C. 20505

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June 22, 1970

MEMORANDUM FOR

Mr. Theodore L. Eliot, Jr.
Executive Secretary
Department of StateSUBJECT: Information Memorandum on the June 25 Meeting
of the OAS General Assembly

We would appreciate receiving by the close of business June 24 an information memorandum for Dr. Kissinger on the terrorism and kidnapping item on the agenda for the Special Session of the Organization of American States (OAS) General Assembly scheduled to begin meeting in Washington on June 25. This memorandum should cover the issues raised by the agenda item, the U.S. position, and the anticipated positions of the other OAS countries.



Jeanne W. Davis

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